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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,674	11/25/2003	William Martin Silvis	67,023-018	7249

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EXAMINER	
RAEVIS, ROBERT R	

ART UNIT	PAPER NUMBER
2856	

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/722,674	SILVIS ET AL.	
	Examiner	Art Unit	
	Robert R. Raevis	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *11/25/03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claims 6 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6 and 11 include limitations already recited in their respective base claims 1 and 8, and thus many limitations are claimed twice. (Double Inclusion)

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 of U.S. Patent No. 6,481,299. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 1 of the application is broader than claim 6 of the patent, and thus is obvious.

Claims 1 and 6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over any one of claims 8, 20 or 24 of copending Application No. 10/254,056. Although the conflicting claims are not

identical, they are not patentably distinct from each other because claims 1 and 6 of the patent are broader than any one of the listed patent claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 8 and 11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over any one of claims 14, 20, 23 or 25 of copending Application No. 10/254,056. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 8 and 11 of the patent are broader than any one of the listed patent claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 14 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over any one of claims 20, 23, 24 or 25 of copending Application No. 10/254,056. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 14 of the patent is broader than any one of the listed patent claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 14 is rejected under 35 U.S.C. 102(b) as anticipated Yamasaki et al.

Yamasaki teaches a "particulate" (col. 1, line 13) sampler, including: transfer tub assembly including an inlet pipe 4 having a first end portion with an opening for receiving exhaust gas and extending to a second end portion; and a mixer receiving the

second end portion and having a portion forming a dilution gas chamber, the mixer including a dilution gas passageway defined by spaced apart first 10 and second 10 feed tubes (visible in Figure 2, 4A, 4B) for carrying dilution gas to said dilution chamber.

As to claim 14, either the pipe 4 may be deemed to be a "probe", as the pipe takes a representative sample from the flowing gas in the automotive exhaust pipe (in Figure 1), or the entire assembly 2 may be deemed to be a "probe" as that assembly is directed to a region of interest to be tested.

Claims 1,3,15,6-8,9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis '595 in view of Colvin.

Lewis teaches (Figure 1) a sampler, including: transfer tube assembly including a pipe 14 (i.e. probe) having ends, an mixer 16 that receives an end of the probe, the mixer including a dilution gas passageway 17, and tunnel connected to the mixer including a mixing passageway (line to the right of element 27) extending a length that mixes gases with an orifice 27 between the probe and mixing passageway, the exhaust gas and dilution gas comminingling prior to flow through the orifice along region 15.

Lewis does not refer to "an outer tube surrounding at least a portion of said probe to define an insulator cavity".

As to claims 1,6,8,9,11, it would have been obvious to employ an "outer tube" around the probe because Colvin teaches (col. 3, lines 40-55) use of an insulating air around an exhaust probe to aide in preventing condensation during sampling.

As to claims 3,10, note the tapering of Lewis's element 27 to the right of the section with minimum diameter.

As to claims 15,16, note that Colvin's mixer overlaps that "outer tube" 202, suggestive of an overlapping mounting for secure connection of elements.

As to claims 7,12, probes that extend into a tail pipe are of a diameter smaller than that pipe, suggestive of a ¼ inch pipe.

Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Colvin as applied to claim1 above, and further in view of Decker et al. '178.

As to claims 2, 5, note Decker's flange 10 teaching as a manner of securing fluid carrying elements of an exhaust gas sampler in a leak resistant manner.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Colvin as applied to claim 8 above, and further in view of Breton '014.

As to claim 13, it would have been obvious to employ a threaded connection between Lewis's probe and mixer because Breton teaches (col. 6, lines 18-22) use of threaded connections to secure exhaust probes to a conduit of interest. Lewis's schematic connection is suggestive of any known probe coupling method, suggestive of Breton.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raevis whose telephone number is 571-272-2204. The examiner can normally be reached on Monday to Friday from 6:30am to 4:00pm. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Raevis

RAEVIS

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAZVI